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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO

WI-LAN INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

No. 3:14-cv-1507-DMS-BLM; (Lead Case No. 3:14-cv-2235-DMS-BLM)
DEMAND FOR JURY TRIAL

WI-LAN INC.'S RESPONSE IN OPPOSITION TO APPLE INC.'S OBJECTIONS TO PROFESSOR PRINCE'S OPINIONS

Department: 13A
Judge: Hon. Dana M. Sabraw
Magistrate Judge: Hon. Barbara L. Major

Plaintiff Wi-LAN Inc. ("Wi-LAN") submits the following opposition to Apple Inc.'s ("Apple") written objections to the testimony of Wi-LAN's survey expert Professor Jeffrey T. Prince. (ECF No. 456.) Through its objections, Apple again seeks to strike Prof. Prince's survey results and opinions as irrelevant and unnecessary. This issue was already briefed by the parties and the Court denied Apple's motion to exclude Prof. Prince's survey results and opinions. (ECF Nos. 333, 352, 373, 401.) Apple's arguments lacked merit when originally rejected by the Court, and its objections similarly fail here.

Notably, Apple's objections are not based on the methods and principles underlying Prof. Prince's survey (which Apple apparently agrees with). Rather, Apple's objections are based on a theory that because Wi-LAN's damages expert (Mr. David Kennedy) should not rely on Prof. Prince's survey results, then Prof. Prince's opinions are irrelevant and unnecessary. (ECF No. 456 at 1.) Specifically, Apple has argued that Mr. Kennedy's opinions are inadmissible because he somehow fails to "apportion the value of the claimed inventions relative to unpatented technology" (*id.*)—the Court rejected that argument. (ECF No. 401.)

Yet, Prof. Prince's survey results are the very definition of apportionment—the survey determines the exact value of the technical benefits of the patents-in-suit by comparing the Accused Products to the next-best noninfringing alternatives. *See, e.g.*, *Riles v. Shell Exploration & Prod. Co.*, 298 F.3d 1302, 1312 (Fed.Cir.2002) ("The economic relationship between the patented method and non-infringing alternative methods, of necessity, would limit the hypothetical negotiation."); (*see also* ECF No. 352 at 14-19.) Prof. Prince incorporated into his survey the technical benefits as analyzed by Prof. Madisetti by comparing the Accused Products to the next-best noninfringing alternatives. (Trial Tr. 7/24AM at 259-72; Trial Tr. 7/25PM at 506, 514.) Apple does not dispute the Federal Circuit's guidance that apportionment can be performed by comparing accused products to the next-best noninfringing alternatives. *See Aqua Shield v. Inter Pool Cover Team*, 774 F.3d 766, 771 (Fed. Cir. 2014) ("In

hypothetical-negotiation terms, the core economic question is what the infringer, in a hypothetical pre-infringement negotiation under hypothetical conditions, would have *anticipated* the profit-making potential of use of the patented technology to be, compared to using non-infringing alternatives.")

For the reasons stated above, and for the reasons outlined in Wi-LAN's opposition to Apple's motion to exclude (ECF No. 352) and the Court's order on Apple's motion to exclude (ECF No. 401), the Court should again reject Apple's objections to the opinions of Professor Prince.

Dated: July 29, 2018

Respectfully,

By: */s/Allison H. Goddard*

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PROOF OF SERVICE

I hereby certify that on July 29, 2018, I caused a copy of **WI-LAN'S OPPOSITION IN RESPONSE TO APPLE'S OBJECTIONS TO PROFESSOR PRINCE'S OPINIONS** to be delivered via CM/ECF on counsel of record for Apple Inc.

Dated: July 29, 2018

By: */s/ Allison Goddard*

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